IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 208 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GE INDIA INDUSTRIAL PVT.LTD.

Versus

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Appearance:

1. COMPANY PETITION No. 208 of 2004

MRS SWATI SOPARKAR for Petitioner No. 1

MR JITENDRA MALKAN, SENIOR CENTRAL GOVERNMENT STANDING COUNSEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 02/02/2005

ORAL JUDGEMENT

This is a petition filed by the petitioner Company for sanction of a Scheme of arrangement which provides for amalgamation of Bently Nevada India Private

Limited, Bently Nevada (Sales & Services) Private Limited, GE Betz India Private Limited, Druck India Private Limited with GE India Industrial Private Limited (the Petitioner Transferee Company) and transfer and vesting of the Demerged Undertaking of GE Power Controls India Private Limited into the Petitioner Company on a going concern basis.

2. The registered offices of all the Transferor Companies are situated in the states of Maharashtra, Karnataka, Tamil Nadu and New Delhi i.e. the States other than Gujarat. Hence the necessary proceedings have been undertaken in the respective states. The Transferee Company is a private limited company and is engaged in manufacturing and marketing the entire range of light sources and components, thermoplastic alloys, blends, compounds, including polycarbonate sheets / films and resins. The manufacturing facilities of the petitioner Company are located at Nadiad, Limbasi, Pansora and Vadodara, all situated in Gujarat. All the companies are private limited companies and belong to the same group of management. The amalgamation is proposed for the synergic advantages. The petitions give details of the advantages that would flow by virtue of the amalgamation of these companies.

3. The meeting of the shareholders of the petitioner Company was dispensed with in view of the consent letters obtained from all the shareholders approving the scheme being put on record.

4. After the petition was admitted, the same was duly advertised in the newspapers (Indian Express English daily and Jansatta-Loksatta - Gujarati daily dated 13.10.2004) and the publication in the Government gazette was dispensed with as directed in the order dated 27.09.2004. No one has come forward with any objections to the said petition even after the publication.

5. Mrs. Swati Soparkar, learned advocate appearing for the petitioner Company has submitted that the petitioner Company is a Transferee Company and so far as Transferor Companies are concerned, petitions were filed before the other High Courts and some of them were already allowed by granting sanction to the Scheme of Arrangement providing for amalgamation of those companies with the petitioner Company. She has further submitted that the Bombay High Court has granted the Scheme of Arrangement vide its order dated 10.12.2004 in Company Petition No. 781 of 2004 filed by Bently Nevada India Private Limited. Similarly, Delhi High Court has

sanctioned the Scheme vide its order dated 06.12.2004 in Company Petition No. 280 of 2004 filed by Bently Nevada (Sales & Services) Private Limited. Chennai High Court has sanctioned the Scheme vide its order dated 27.12.2004 in Company Petition No. 240 of 2004 filed by GE Betz India Private Limited. Company Petition No. 173 of 2004 filed by Druck India Private Limited for sanction of the Scheme is pending for hearing before Karnataka High Court. Company Petition No. 174 of 2004 filed by GE Power Controls India Private Limited is pending for hearing before the Karnataka High Court which is fixed on 08.02.2005. In view of the above facts, she has submitted that since there being no objection from any corner, the Scheme as prayed for in this petition may be sanctioned.

6. On notice being issued to the Central Government, Mr. Jitendra Malkan, learned Senior Standing Counsel appeared on behalf of the Central Government. He has placed on record the letter from the Regional Director dated 05.01.2005 addressed to the Registrar of Companies. In the said letter, following three observations were made by the Regional Director :-

i) The petitioner/Transferee Company has to increase its Authorised Capital to fulfill the obligation to allot the shares as per the ratio fixed and file Form No. 5 with the Registrar of Companies with the Central Govt. fees in addition to payment of Stamp Duty as required under Section 97 of the Companies Act, 1956.

ii) The proposal for amendment in the object clause of the Memorandum of Association of the Transferee Company contained in clause (21) of Part C 'General Provision' of the scheme should be made subject to compliance of section 17/18/19 of the Companies Act, 1956.

iii) Creditors meeting is not got dispensed with, unlike the meeting of Equity shareholder of the company.

7. So far as the first observation is concerned, Mrs. Swati Soparkar has submitted that Authorised Capital of the Company shall be increased after the sanction of the Scheme and before the actual issue of shares of the Transferee Company to the shareholders of the Transferor Company pursuant to the clauses of the Scheme.

8. With regard to the second observation pertaining to compliance with the procedural requirement for the change in the Object clause, it has been submitted that the concept of the Single Window Clearance has been accepted in number of cases. It is an accepted position that the Scheme under Sections 391 & 394 is a complete code in itself and considering the principle of Single Window Clearance, it is not necessary for the petitioner Company to get separate Clearances prescribed under the Companies Act, 1956. The said submission is substantiated by the decision of the Bombay High Court in the case of PMP Auto Industries Limited, 80 Company Cases 291 and the decision of this Court in the case of Manekchawk Mills, 40 Company Cases 819 and also in the case of Rangkala Investment Private Ltd., 89 Company Cases 754 and in the case of ICICI Bank Limited, 112 Company Cases 291. She has also placed on record the other two decisions of this Court in Company Petition Nos. 63 to 67 of 2004 in the case of Baroda Precimould Pvt. Ltd. decided on 12.08.2004 and in Company Petition No. 148 of 2003 in the case of Search Chem Industries Limited decided on 28.08.2003. She has also submitted that in view of the aforesaid legal position, it is not necessary to file separate procedure for the same. However, the petitioner shall file necessary Forms in this regard with the office of the Registrar of Companies.

9. With regard to the third observation made by the Regional Director, Mrs. Swati Soparkar has submitted that the Scheme does not envisage any compromise with the Creditors of the Transferee Company and the rights of the Transferee Company are not in any way affected as the Transferee Company shall continue the business even after the Scheme is sanctioned. It is not necessary to seek approval of the Creditors of the Transferee Company.

10. Considering the above submissions and having gone through the objections, I am satisfied that the observations made by the Central Government are misconceived as held by this Court in the cases cited hereinabove. The Scheme proposed under Sections 391 & 394 gives Single Window Clearance and there is no reason to insist for a separate procedure to be followed for the change in the amalgamation of Companies. However, the petitioner Company is hereby directed to file necessary Form as prescribed under the law in the office of Registrar of Companies to place on record the changes sought to be made.

11. In view of the above facts and circumstances of

the case, I am satisfied that the proposed Arrangement would be in the interest of the Company and its members and Creditors. Prayers in terms of para 22 (a) are hereby granted.

12. The petition is disposed of accordingly. So far as the costs to be paid to the Central Govt. Standing Counsel is concerned, I quantify the same at Rs. 3,500/-. The same may be paid to learned Senior Central Govt. Standing Counsel Mr. Jitendra Malkan.

Sd/-

[K.A. PUJ, J.]

#Savariya#

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